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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

AZ CORP COMMISSION  
DOCUMENT CONTROL

IN THE MATTER OF:

DOCKET NO. T-03406A-06-0257  
DOCKET NO. T-01051B-06-0257

ESCHELON TELECOM OF ARIZONA, INC.

Complainant,

vs

QWEST CORPORATION,

Respondent.

PROCEDURAL ORDER

**BY THE COMMISSION:**

On April 14, 2006, Eschelon Telecom of Arizona, Inc. ("Eschelon") filed with the Arizona Corporation Commission ("Commission") a complaint against Qwest Corporation ("Qwest") stating that Qwest has refused to provide both repairs for disconnects in error and the capability to expedite orders for unbundled loops under the repair and expedite language of the Qwest-Eschelon Interconnection Agreement ("ICA").

On April 27, 2006, Qwest and Eschelon filed an Agreement of Parties for Extension of Time to Answer the Complaint in this matter, giving Qwest until May 12, 2006 to file its Answer.

On May 12, 2006, Qwest filed its Answer to Eschelon's Complaint.

On May 16, 2006, by Procedural Order, a procedural conference was scheduled for May 24, 2006.

On May 19, 2006, at the request of the parties, the procedural conference originally set for May 24, 2006, was rescheduled for May 23, 2006.

At the procedural conference on May 23, 2006, counsel for the parties appeared and discussed their desire to implement an interim resolution regarding repairs and the capability to expedite orders for unbundled loops through the resolution of this proceeding. Each party agreed that an accounting

1 and a "true-up" to settle outstanding financial matters would be made based upon any decision issued  
2 in this matter. The parties were not in agreement regarding the particulars of the interim resolution,  
3 and were therefore ordered to file proposed schedules and interim resolutions for the consideration of  
4 the Administrative Law Judge by procedural order issued on May 23, 2006.

5 On June 2, 2006, both Eschelon and Qwest filed their proposed schedules and interim  
6 resolutions. Eschelon proposed interim terms that apply the emergency conditions of Qwest's  
7 existing Expedite Requiring Approval, under which, if emergency conditions are met, Qwest would  
8 expedite the order at no additional cost to Eschelon for unbundled loops. If emergency conditions are  
9 not met, Eschelon would pay \$200 per day per expedite request. Qwest proposed interim terms that  
10 would apply the expedite process established in the Change Management Process (requiring Eschelon  
11 to pay \$200 per day per expedite request, without a determination of whether emergency conditions  
12 exist) without requiring Eschelon to enter into an amendment to its ICA. Each proposal provides for  
13 a true-up upon resolution of the matters pending in this docket.

14 Qwest's proposed interim solution would allow Eschelon to request expedites for the cost of  
15 \$200 per day per expedite, without requiring an amendment to the current ICA, with no provision for  
16 no-cost emergency expedites. Another option is to maintain the status quo. Eschelon's proposal is a  
17 good compromise, preserving the Eschelon's ability to obtain no-cost emergency expedites but  
18 providing for payment to Qwest for non-emergency expedites. We will adopt Eschelon's interim  
19 proposal in this docket, as it best preserves the respective parties' rights.

20 Likewise, each party proposed disparate timelines for testimony, discovery, and hearing dates.  
21 Eschelon has requested a somewhat compressed timeline. Qwest's lead counsel indicated that he has  
22 prior legal obligations during July, September, and October of 2006, and therefore Qwest has  
23 requested an extended timeline.

24 Given Staff's expertise and experience with the Change Management Process, Staff  
25 participation will be necessary in this matter.

26 Taking the parties' schedules and requirements into account, we will adopt a modified  
27 schedule as follows:

28 ...

|   |                           |                    |
|---|---------------------------|--------------------|
| 1 | Eschelon Testimony        | July 14, 2006      |
| 2 | Qwest Testimony           | August 21, 2006    |
| 3 | Staff Testimony           | September 14, 2006 |
| 4 | Eschelon & Qwest Rebuttal | September 25, 2006 |
| 5 | Pre-hearing conference    | September 27, 2006 |
| 6 | Hearing                   | October 2-5, 2006  |

7 IT IS THEREFORE ORDERED that the parties shall apply the interim resolution for expedite  
8 process provided for in Eschelon Telecom of Arizona's June 2, 2006 filing.

9 IT IS FURTHER ORDERED that the **hearing** in this matter shall be held on **October 2, 2006**  
10 **at 10:00 a.m.** at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. The  
11 parties shall set aside time through October 5, 2006 in the event that additional hearing dates are  
12 necessary.

13 IT IS FURTHER ORDERED that Eschelon's testimony and associated exhibits to be presented  
14 at hearing shall be reduced to writing and filed on or before **July 14, 2006**.

15 IT IS FURTHER ORDERED that Qwest's testimony and associated exhibits to be presented at  
16 the hearing shall be reduced to writing and filed on or before **August 21, 2006**.

17 IT IS FURTHER ORDERED that Staff's testimony and associated exhibits to be presented at  
18 hearing shall be reduced to writing and filed on or before **September 14, 2006**.

19 IT IS FURTHER ORDERED that any rebuttal testimony and associated exhibits to be  
20 presented at hearing by Eschelon and Qwest shall be reduced to writing and filed on or before  
21 **September 25, 2006**.

22 IT IS FURTHER ORDERED that a pre-hearing conference shall be held on **September 27,**  
23 **2006** at 10:00 a.m. at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona.

24 IT IS FURTHER ORDERED that all filings shall be made by 4:00 p.m. on the date the filing  
25 is due, unless otherwise indicated above.

26 IT IS FURTHER ORDERED that any objections to any testimony or exhibits which have  
27 been prefiled as of September 25, 2006, shall be made at or before the September 27, 2006, pre-  
28

1 hearing conference.

2 IT IS FURTHER ORDERED that any substantive corrections, revisions, or supplements to  
3 pre-filed testimony shall be reduced to writing and filed no later than five days before the witness is  
4 scheduled to testify.

5 IT IS FURTHER ORDERED that discovery shall be as permitted by law and the rules and  
6 regulations of the Commission, except that: any objection to discovery requests shall be made within  
7 7 days<sup>1</sup> of receipt and responses to discovery requests shall be made within 10 days of receipt; the  
8 response time may be extended by mutual agreement of the parties involved if the request requires an  
9 extensive compilation effort; and no discovery requests shall be served after **September 27, 2006**.

10 IT IS FURTHER ORDERED that discovery requests, objections, and answers may be served  
11 electronically.<sup>2</sup>

12 IT IS FURTHER ORDERED that, in the alternative to filing a written motion to compel  
13 discovery, any party seeking resolution of a discovery dispute may telephonically contact the  
14 Commission's Hearing Division to request a date for a procedural hearing to resolve the discovery  
15 dispute; that upon such a request, a procedural hearing will be convened as soon as practicable; and  
16 that the party making such a request shall forthwith contact all other parties to advise them of the  
17 hearing date and shall at the hearing provide a statement confirming that the other parties were  
18 contacted.<sup>3</sup>

19 IT IS FURTHER ORDERED that any motions which are filed in this matter and which are  
20 not ruled upon by the Commission within 20 days of the filing date of the motion shall be deemed  
21 denied.

22 IT IS FURTHER ORDERED that any responses to motions shall be filed within five days of  
23 the filing date of the motion.  
24

25  
26 <sup>1</sup> "Days" means calendar days. The date of receipt of discovery requests is not counted as a day, and requests  
received after 4:00 p.m. will be considered as received the next business day.

27 <sup>2</sup> If requested by the receiving party, and the sending party has the technical capability, service electronically is  
mandatory.

28 <sup>3</sup> The parties are encouraged to attempt to settle discovery disputes through informal, good-faith negotiations  
before seeking Commission resolution of the controversy.

1 IT IS FURTHER ORDERED that any replies shall be filed within five days of the filing date  
2 of the response.


3 IT IS FURTHER ORDERED that all parties must comply with Rule 33 (c) and (d) of the  
4 Rules of the Arizona Supreme Court with respect to practice of law and admission *pro hac vice*.

5 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
6 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
7 Arizona Supreme Court). Representation before the Commission includes the obligation to appear at  
8 all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
9 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
10 Administrative Law Judge or the Commission.

11 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized  
12 Communications) applies to this proceeding and shall remain in effect until the Commission's  
13 Decision in this matter is final and non-appeable.

14 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
15 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

16 Dated this 6 day of June, 2006

17  
18  
19   
20 AMY BJELLAND  
ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing mailed/delivered  
22 this 6 day of June, 2006 to:

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22 By:

23   
24 Molly Johnson  
25 Secretary to Amy Bjelland  
26  
27  
28